

**TOWNSHIP OF LOWER ALLOWAYS CREEK
ORDINANCE 2015-08**

**AN ORDINANCE AMENDING CHAPTER 13 KNOWN AS “DEFENSE AND
INDEMNIFICATION” OF THE CODE OF THE TOWNSHIP OF LOWER ALLOWAYS
CREEK**

Be it ordained by the Township Committee of the Township of Lower Alloways Creek, as follows:

Section 1. The Lower Alloways Creek Township Code Chapter 13 known as “Defense and Indemnification” is hereby amended in its entirety:

CHAPTER 13

DEFENSE AND INDEMNIFICATION

- § 13-1 Indemnification and legal defense provided**
- § 13-2 Determination of Indemnification and legal defense**
- § 13-3 Definition of official, employee and appointee.**
- § 13-4 Defense of and indemnify**
- § 13-5 Other actions.**
- § 13-6 Exclusive control over the representation.**
- § 13-7 Asserting the right of the Township.**
- § 13-8 Effective date.**

~~§ 13-1. Members of Planning Board or Zoning Board of Adjustment.~~

~~[HISTORY: Adopted by the Township Committee of the Township of Lower Alloways Creek 6-21-1994 as Ord. No. 94 4. Amendments noted where applicable.]~~

~~§ 13-1. Members of Planning Board or Zoning Board of Adjustment.~~

~~—Whenever a member of the Planning Board or Zoning Board of Adjustment of the Township of Lower Alloways Creek is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of his or her duty as a member of said Board, the Township Committee of the Township of Lower Alloways Creek shall provide said member with necessary means for defense of such action or proceeding. The provisions of this chapter, however, shall not require said Township Committee to provide said member with necessary means for the defense of any action or legal proceeding instituted by or on behalf of the township for removal of said member from membership on the Board to which he or she has been appointed to serve.~~

~~[HISTORY: Adopted by the Township Committee of the Township of Lower Alloways Creek 01-19-2016 as Ord. No. 2015-08.]~~

§ 13-1 Indemnification and legal defense provided

Except as hereinafter provided, the Township of Lower Alloways Creek, hereinafter known as the Township shall, upon the request of any present or former official, employee or appointee of the Township provide for indemnification and legal defense of any civil action brought against

said person or persons arising from an act or omission falling within the scope of their public duties.

§ 13-2. Determination of Indemnification and legal defense

The Township shall not indemnify any person against the payment of punitive damages, penalties, or fines, but may provide for the legal defense of such claims in accord with the standards set forth herein. The Township may refuse to provide for the defense and indemnification of any civil action referred to herein if the (governing body name) determines that:

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- a) the act or omission did not occur within the scope of a duty authorized or imposed by law;
- b) the act or failure to act was the result of actual fraud, willful misconduct or actual malice of the person requesting defense and indemnification;
- or
- c) the defense of the action or proceeding by the Township would create a conflict of interest between the Township and the person or persons involved.

§ 13-3. Definition of official, employee and appointee.

The terms of this ordinance and the definition of official, employee and appointee are to be construed liberally in order to effectuate the purposes of this ordinance except that these terms shall not mean:

- a) any person who is not a natural person;
- b) any person while providing goods or services of any kind under any contract with the Township except an employment contract;
- c) any person while providing legal or engineering services for compensation unless said person is a full-time employee of the (local unit type);
- d) any person who as a condition of his or her appointment or contract is required to indemnify and defend the Township and/or secure insurance.

§ 13-4. Defense of and indemnify

The Township shall provide for defense of and indemnify any present or former official, employee or appointee of the Township who becomes a defendant in a civil action if the person or persons involved:

- a) acted or failed to act in a matter in which the Township has or had an interest;
- b) acted or failed to act in the discharge of a duty imposed or authorized by law; and
- c) acted or failed to take action in good faith.

For purposes of this ordinance, the duty and authority of the Township to defend and indemnify shall extend to a cross-claim or counterclaim against said person.

§ 13-5. Other actions.

In any other action or proceeding, including criminal proceedings, the Township may provide for the defense of a present or former official, employee or appointee, if the Township Committee concludes that such representation is in the best interest of the Township and that the person to be defended acted or failed to act in accord with the standards set forth in this ordinance.

§ 13-6. Exclusive control over the representation.

Whenever the Township provides for the defense of any action set forth herein and as a condition of such defense, the Township may assume exclusive control over the representation of such persons defended and such person shall cooperate fully with the (local unit type).

§ 13-7. Asserting the right of the Township.

The Township may provide for the defense pursuant to this ordinance by authorizing its attorney to act in behalf of the person being defended or by employing other counsel for this purpose or by asserting the right of the Township under any appropriate insurance policy that requires the insurer to provide defense.

§ 13-8. Effective date.

This ordinance shall take effect immediately upon passage and publication as required by law.

Section 2. This ordinance shall take effect as provided by the law.

Public Hearing on this Ordinance shall be on January 19, 2016 at 7:30 p.m., at the Municipal Building, 501 Locust Island Road, Hancock's Bridge, New Jersey.

This Ordinance which was introduced for First Reading on December 15, 2015 shall be published by Title in the South Jersey Times and placed on the Township's Bulletin Board giving notice of said Public Hearing as required by Law.

Introduction: December 15, 2015

COMMITTEE MEMBER	MOVE	SECOND	YES	NO	ABSTAIN	ABSENT
MR. BRESLIN			Y			
MR. PALOMBO			Y			
MRS. POMPPER	M		Y			
MR. VENABLE		S	Y			
MAYOR BRADWAY			Y			

Final: January 20, 2016

COMMITTEE MEMBER	MOVE	SECOND	YES	NO	ABSTAIN	ABSENT
MR. BRESLIN						
MR. PALOMBO						
MRS. POMPPER						
MR. VENABLE						
MAYOR BRADWAY						

Attest

Lower Alloways Creek

Ronald L Campbell Sr., Clerk

By: Mayor, Ellen B. Pompper